



Federal Communications Commission  
Washington, D.C. 20554

**DA 05-1742**

June 23, 2005

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Washington, D.C. 20036

Re: Call Sign E050092  
File No. SES-LIC-20050405-00390

Call Sign E050093  
File No. SES-LIC-20050405-00391

Dear Mr. Wiltshire:

On April 05, 2005, DirecTV Enterprises, LLC ('DirecTV') filed the above-captioned applications for authority to operate new Ka-Band<sup>1</sup> earth stations in Castle Rock, Colorado and in Los Angeles, California<sup>2</sup> using Andrew 9.2 meter antennas. Both applications list DIRECTV8, SPACEWAY1, SPACEWAY2, and ALSAT as Points of Communications. For the reasons explained below, we DISMISS the applications without prejudice to refiling.<sup>3</sup>

The Commission's rules include specific information requirements from earth station applicants in order for their applications to be complete and acceptable for filing. In particular, Section 25.115(e),<sup>4</sup> among other things, requires earth station applications seeking to operate in the 20/30 GHz Fixed Satellite Service (FSS) to file the information described in Section 25.138(d). Section 25.138(d), in turn, requires earth station applications to provide for each earth station antenna type "a series of radiation patterns

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<sup>1</sup> 18.3-18.8 GHz, 19.7-20.2 GHz, 28.35-28.6 GHz, and 29.25-30.0 GHz.

<sup>2</sup> SES-LIC-20050405-00390 proposes antenna site in Castle Rock, Colorado and SES-LIC-20050405-00391 proposes antenna site in Los Angeles, California.

<sup>3</sup> If DirecTV refiles the applications for a new license identical to the ones dismissed, with the exception of supplying the missing information, it need not pay an application fee. *See* 47 C.F.R. § 1.1109(d).

<sup>4</sup> Section 25.115(e) states in part that "[A]pplications to license individual earth stations operating in the 20/30GHz band shall be filed on FCC Form 312, Main form and Schedule B, and shall also include the information described in Section 25.138."

measured on a production antenna performed on a calibrated antenna range..." DirecTV failed to provide all the information noted and instead seeks to waive the completeness requirement by granting this license on the condition that such information be provided subsequently. In a separate request, DirecTV sought and was granted Special Temporary Authority (STA)<sup>5</sup> to obtain measured data on an installed antenna.

The Commission may grant a waiver for good cause shown.<sup>6</sup> Waiver is appropriate if (1) special circumstances warrant a deviation from the general rule, and (2) such deviation would better serve the public interest than would strict adherence to the general rule.<sup>7</sup> Circumstances that would justify a waiver include "considerations of hardship, equity, or more effective implementation of overall policy."<sup>8</sup> Generally, the Commission may grant a waiver of its rules in a particular case only if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.<sup>9</sup>

The Commission requires satellite and earth station applications to be substantially complete when filed.<sup>10</sup> Unless applications are substantially complete, other interested parties would not be able to determine whether or to what extent the proposed earth station creates a risk of harmful interference to other licensed operations.<sup>11</sup> In its waiver requests, DirecTV submits representative sets of measurement data for this model antenna for the *bottom* and *top* frequencies for transmit and receive bands over a limited range of parameters. The waiver request indicates that this specific antenna will not be measured over the wide range of parameters as specified in Section 25.138(d). DirecTV does not provide a justification for why the representative sets of measurement data provided over limited parameters are sufficient to meet the objectives of Section 25.138(d). Furthermore, DirecTV does not provide an explanation as to why it could not

<sup>5</sup> See File No. SES-STA-20050505-00540 for Call Sign E050092 and File No. SES-STA-20050505-00541 for Call Sign E050093. On May 5, 2005, DirecTV filed the STA requests to perform the necessary testing on the proposed antenna and indicated that it would provide the measured antenna pattern over the proposed range of frequencies as required under 47 C.F.R. § 25.138(d) as the test is completed. The Commission granted DirecTV the STA requests to conduct antenna performance measurements. 47 C.F.R. § 25.138(d) specifies that the measurements are to be taken in a calibrated antenna range.

<sup>6</sup> 47 C.F.R. § 1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>7</sup> See *Northeast Cellular*, 897 F.2d at 1166.

<sup>8</sup> *WAIT Radio*, 418 F.2d at 1159. See also *Onsat Petition for Waiver to Permit Routine Licensing of 3.7 Meter Transmit and Receive Stations at C-Band*, *Order*, 15 FCC Rcd 24488, 24490 (para. 5) (Int'l. Bur., 2000).

<sup>9</sup> See *WAIT Radio*, 418 F.2d at 1157.

<sup>10</sup> 47 C.F.R. § 25.112.

<sup>11</sup> See *EchoStar Satellite, LLC, Order on Reconsideration*, DA 04-4056, at para. 12 (Int'l Bur., 2004), citing *Salzer v. FCC*, 778 F.2d 869, 877 (D.C. Cir. 1985) ("[I]t is not the agency's task to select for an applicant the type of operation that will minimize impermissible interference.").

file its application once measured patterns were available and therefore be able to file a substantially complete application. Therefore, DirecTV has not shown that it faces any hardship or inequity that justifies a waiver of the Commission's policy of accepting only substantially complete applications. In light of the above, the request for partial waiver of 47 C.F.R. §§ 25.115(e) and 25.138(d) is HEREBY DENIED and your application will be DISMISSED as incomplete.

We take this opportunity to apprise DirecTV of other errors that it should correct if it chooses to refile the applications. In its application file number SES-LIC-20050405-00390, the proposed elevation angle and azimuth angle are inconsistent with the limit of the satellite arc and location of the earth station. Specifically, the values submitted for the elevation angle is 33.2° and for the azimuth angle is 125.1°. These values are inconsistent with the values of 37.8° for elevation angle and 143.9° azimuth angle that correspond to the eastern limit of satellite arc of 80° W.L. and the earth station location at 39°16'38.4" N.L. and 104°48'27.4"W.L. Lastly, we note that the applications list ALSAT as one of the Points of Communication. Since ALSAT authority is permitted only for earth stations using the conventional C-Band<sup>12</sup> or conventional Ku-Band,<sup>13</sup> DirecTV should remove ALSAT as one of the Points of Communication to avoid internal inconsistencies.

In light of the above, the partial waiver request is HEREBY DENIED. Therefore, we DISMISS the applications without prejudice to refiling. These actions are taken pursuant to 47 C.F.R. § 0.261.

Sincerely,

Scott A. Kotler  
Chief, Systems Analysis Branch  
Satellite Division  
International Bureau

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<sup>12</sup> 3.7-4.2 GHz and 5.925-6.425 GHz.

<sup>13</sup> 11.7-12.2 GHz and 14.0-14.5 GHz.